

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

URGENT JOINT MOTION REGARDING DEPOSITION OF DAVID W. PRAGER

To The Honorable United States District Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of debtors the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), and the Puerto Rico Public Buildings Authority (“PBA,” and collectively with the Commonwealth and ERS, the “Debtors”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² AmeriNational Community Services, LLC (the “Servicer”), as servicer for the GDB Debt Recovery Authority (the “DRA”),

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

² PROMESA is codified at 48 U.S.C. §§ 2101-2241.

and Cantor-Katz Collateral Monitor LLC, which serves as the collateral monitor for Wilmington Trust, N.A. in connection with the bonds issued by the DRA³ (the “Collateral Monitor,” and together with the Servicer, collectively, the “DRA Parties,” and jointly with the Oversight Board, the “Parties”), by and through the undersigned legal counsel, respectfully jointly submit this urgent motion (the “Motion”) requesting entry of an order granting leave for the Oversight Board to depose David W. Prager on October 19, 2021, following the close of discovery as set forth in the *Amended Order Establishing Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* [ECF No. 18394] (the “Amended Confirmation Procedures Order”).

JURISDICTION AND VENUE

1. The United States District Court for the District of Puerto Rico (the “Court”) has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA. Venue is proper pursuant to PROMESA § 307(a).

2. The statutory basis for the relief requested herein is Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9018, made applicable to these proceedings by PROMESA §§ 301(a) and 310, and Local Rule 9018-1 of the Local Bankruptcy Rules for the District of Puerto Rico (the “Local Rules”).

BACKGROUND

3. On August 2, 2021, the Court entered its *Order Establishing Procedures and Deadlines Concerning Objection to Confirmation and Discovery in Connection Therewith* [Dkt.

³ The DRA bonds were issued pursuant to the *Government Development Bank for Puerto Rico Debt Restructuring Act*, Act No. 109-2017, as amended by Act No. 147-2018.

No. 17640] (the “Confirmation Procedures Order”),⁴ which provides for, among other things, discovery and depositions related to the *Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* [Dkt. No. 17627] (as may be amended, modified, or supplemented, the “Plan”).

4. On September 6, 2021, the DRA Parties submitted *The DRA Parties’ Opening Expert Disclosures* [ECF No. 18042] (the “Opening Disclosure”). Therein, the DRA Parties disclosed Mr. Prager as a rebuttal expert witness “who may provide rebuttal expert testimony regarding whether the Plan is feasible and in the best interests of creditors.” Opening Disclosure at 3.

5. On October 4, 2021, the DRA Parties submitted *The DRA Parties’ Rebuttal Expert Disclosure* [ECF No. 18386] (the “Rebuttal Disclosure”). Therein, the DRA Parties disclosed Mr. Prager as a rebuttal expert witness “who may provide rebuttal expert testimony regarding whether the Plan is in the best interests of creditors.” Rebuttal Disclosure at 2.

6. On October 6, 2021, the Oversight Board served *Notice of Videotaped Deposition of David W. Prager*, which noticed Mr. Prager’s deposition for October 18, 2021, along with a subpoena for Mr. Prager’s appearance at the deposition and a subpoena duces tecum requiring Mr. Prager to produce documents listed in Attachment A to the subpoena.

7. On October 7, 2021, following discussions between counsel for the Oversight Board and counsel for the DRA Parties, the DRA Parties filed an urgent motion seeking leave to supplement their forthcoming rebuttal expert report within two days following the October 13,

⁴ The Confirmation Procedures Order was subsequently amended on October 5, 2021. See Amended Confirmation Procedures Order.

2021 deposition of Marti Murray, which would be after the October 8, 2021 deadline for rebuttal expert reports as set forth by the Court. *See Urgent Motion of DRA Parties Requesting Leave to Supplement Their Rebuttal Expert Report After the Deadline for Such Reports Set Forth in the Confirmation Procedures Order* [Dkt. No. 18434] (the “Supplemental Rebuttal Report Motion”). The Oversight Board did not oppose the relief sought in the Supplemental Rebuttal Report Motion.

8. On October 8, 2021, the DRA Parties served the *Report of David W. Prager, CFA Respecting Best Interests of Creditors Test* (the “Prager Report”) on, among other parties, the Oversight Board.⁵

9. On October 11, 2021, counsel for the DRA Parties advised the Oversight Board that it would accept the subpoenas directed at Mr. Prager, but that Mr. Prager would not be made available for a deposition until October 19, 2021, due to another deposition scheduled on October 18, 2021 that required the participation of the same counsel for the DRA Parties who would attend Mr. Prager’s deposition.

10. On October 14, 2021, the Oversight Board served *Amended Notice of Videotaped Deposition of David W. Prager* (the “Amended Deposition Notice”), noticing Mr. Prager’s deposition for October 19, 2021.

11. Also on October 14, 2021, the Court granted the Supplemental Rebuttal Report Motion. *See Order Granting Urgent Motion of DRA Parties Requesting Leave to Supplement Their Rebuttal Expert Report After the Deadline for Such Reports Set Forth in the Confirmation Procedures Order* [ECF No. 18495].

⁵ A redacted version of the Prager Report is available at ECF No. 18445-1.

RELIEF REQUESTED

12. The Parties respectfully request that the Court enter an order, as set forth in the attached **Exhibit A**, authorizing the Oversight Board to take a deposition of Mr. Prager on October 19, 2021, following the close of discovery on October 18, 2021, as set forth in the Amended Confirmation Procedures Order.

BASIS FOR RELIEF REQUESTED

13. The Oversight Board seeks to depose Mr. Prager in connection with the Prager Report. As per the schedule set forth in the Amended Confirmation Procedures Order, the Prager Report was served on October 8, 2021.

14. In order to allow sufficient time to review and analyze the Prager Report while keeping his deposition within the expert discovery period set forth in the Amended Confirmation Procedures Order, the Oversight Board originally noticed the deposition of Mr. Prager for October 18, 2021 (the last day of the expert discovery period). The Oversight Board also sought to schedule Mr. Prager's deposition for October 18, 2021 in order to allow ample time to receive and review any supplemental rebuttal report filed on or before October 15, 2021, in connection with the Supplemental Rebuttal Report Motion before conducting the deposition.

15. Because counsel for the DRA Parties rejected the October 18, 2021 date for Mr. Prager's deposition, the Oversight Board has agreed to take Mr. Prager's deposition on October 19, 2021, the day after the close of expert discovery.

CERTIFICATOIN

16. Pursuant to Local Rule 9013-1 and paragraph I.H of the *Fifteenth Amended Case Management Procedures* [ECF No. 17127-1], the Parties certify that they: (a) have carefully examined the matter and have concluded that there is a true need for urgent relief; (b) have not

created the urgency through lack of due diligence on their part; (c) made a bona fide effort to resolve the matter without seeking leave of Court; (d) made reasonable, good-faith communications in an attempt to resolve or narrow the issues being brought to the Court; and (e) consent to the relief sought herein.

17. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Parties respectfully request that this Motion be GRANTED, and that the Court issue an order substantially in the form attached hereto as **Exhibit A**, authorizing the Oversight Board to depose Mr. Prager on October 19, 2021, in connection with the Amended Deposition Notice served on the DRA Parties pursuant to Rule 30 of the Federal Rules of Civil Procedure, and granting such relief as the Court deems just and proper under the circumstances.

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Dated: October 15, 2021
San Juan, Puerto Rico

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***Attorneys for Cantor-Katz Collateral
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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer

Exhibit A

Proposed Order

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

**ORDER GRANTING URGENT JOINT MOTION REGARDING DEPOSITION OF
DAVID W. PRAGER**

Upon consideration of the *Urgent Joint Motion Regarding Deposition of David W. Prager*, dated October 15, 2021 (the “Motion”),² filed by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as sole Title III representative of debtors the Commonwealth of Puerto Rico (the “Commonwealth”), the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), and the Puerto Rico Public Buildings Authority (“PBA,” and collectively with the Commonwealth and ERS, the “Debtors”) pursuant to

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”)³, AmeriNational Community Services, LLC (the “Servicer”), as servicer for the GDB Debt Recovery Authority (the “DRA”), and Cantor-Katz Collateral Monitor LLC, which serves as the collateral monitor for Wilmington Trust, N.A. in connection with the new bonds issued by the DRA⁴ (the “Collateral Monitor,” and together with the Servicer, collectively, the “DRA Parties”); and the Court having jurisdiction over this matter under 28 U.S.C. § 1331, and under section 306(a)-(b) of PROMESA, 48 U.S.C. § 2166(a)-(b); and venue being proper under section 307(a) of PROMESA, 48 U.S.C. § 2167(a); and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is GRANTED;

ORDERED that the Oversight Board shall be authorized to depose Mr. Prager in connection with the Amended Deposition Notice on October 19, 2021, following the close of discovery as set forth in the Amended Confirmation Procedures Order;

ORDERED that this Court shall retain jurisdiction with respect to all matters relating to the interpretation and implementation of this Order.

SO ORDERED.

³ PROMESA is codified at 48 U.S.C. §§ 2101-2241.

⁴ The DRA bonds were issued pursuant to the *Government Development Bank for Puerto Rico Debt Restructuring Act*, Act No. 109-2017, as amended by Act No. 147-2018.

Dated: _____, 2021

Honorable Laura Taylor Swain
United States District Court Judge